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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/677,737 | 10/02/2000 | Curtis Cole | JBP525 | 3415 |

7590 11/05/2003
Philip S Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003

EXAMINER

YU, GINA C

| ART UNIT | PAPER NUMBER |
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1617

DATE MAILED: 11/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/677,737

Applicant(s)

COLE ET AL.

Examiner

Gina C. Yu

Art Unit

1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 October 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 01 October 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See continuation sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.Claim(s) objected to: None.Claim(s) rejected: 1-3, 5, 6 and 9-15.Claim(s) withdrawn from consideration: None.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
10. ☐ Other: _____


SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER

10/30/03

Continuation from no. 5:

In response to applicants' argument '623 patent fails to teach using dimethylaminoethanol and tyrosine to ameliorate redness or inflammation, Examiner views that the instant invention reads on the prior art because examiner views that the prior art treatment of acne overlaps with the presently claimed method of ameliorating redness (or inflammation). While applicants assert that the prior art is limited to treating acne, examiner notes that redness and inflammation is a symptom of acne, and the application of the prior art to treat acne inherently performs the present method.

In response to applicants' argument that '942 patent is limited to scar treatment, examiner respectfully disagrees with the applicants' position that the reference fails to teach or suggest ameliorating redness or inflammation. In response to applicants' remarks that the examples do not contain triethanolamine, examiner reiterates that the rejection is made based on the specific teaching in the reference that the most preferred embodiment contains diethanolamine and tyrosine. See col. 7, line 44- col.8, line 25.

Applicants further argues that the examiner misinterpreted the teaching of Pitchelintsev (US 5972993). Examiner respectfully disagrees, and reminds applicants that the Office policy is to interpret the scope of the claims as broadly as possible. Claim 1 recites a method of ameliorating redness or inflammation by topically applying a composition comprising an alkylamino alcohol. The claim reads on the prior art which teaches to use a topical composition comprising triethanolamine for the claimed purposes.

Applicants further assert that there is no suggestion or motivation to modify the '942 patent. Examiner reiterates the disclosure of the DeLacharriers patent (US 5968532) suggests a skilled artisan that inflammatory scar wounds and irritation caused by skin irritants exhibit same symptoms such as stinging and itching. The obviousness rejection is based on the notion that it would have been obvious to a skilled artisan that the '942 patent is similarly effective to treat the skin irritation caused by skin irritants.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 703-308-3951.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 703-305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Gina C. Yu
Patent Examiner